

REMARKS

The Final Action of December 2, 2008, has been carefully reviewed. The claims remain as claims 11, 12, 14-19, 21 and 22, and these claims call for patentable subject matter and therefore should be allowed. Favorable reconsideration, entry of the amendments presented above, and allowance are respectfully urged.

The previous rejections have been repeated. Thus, claims 11, 12, 14-17, 21 and 22 have been rejected under Section 103 as obvious from Takahashi in view of Schmidt; claim 18 has been rejected as obvious under Section 103 from Takahashi in view of Schmidt and further in view of Yamazaki and Kuwata; and claim 19 has been rejected under Section 103 as obvious from Takahashi in view of Schmidt and further in view of Forestier. These rejections are all respectfully traversed for the reason of record, respectfully repeated by reference, and for the additional reasons set forth below.

The examiner's interpretation of claim 11 as calling for a pigment permitting more than one layer encapsulating the substrate is unjustified. Claim 11, at the time of the Final rejection, recited "a metal-effect pigment of a metallic substrate having a coating **consisting of a single layer** encapsulating the substrate..." [Emphasis added]. The word

"having" cannot reasonably or validly cancel out the "consisting of" language or the "single layer" language. Nevertheless, applicants present further amendments above to further improve the form of claim 11, but without changing the scope of claim 11.

The above amendments for claim 11 involve (1) changing the form to the Jepson form wherein the Jepson preamble recites the presence in the cosmetic preparation of both (i) a pigment and (ii) a carrier material or base formulation, support being found throughout applicants' specification and explicitly in the third line of the second paragraph on page 1 of applicants' specification, and (2) tightening the language calling for the metal-effect pigment so as to remove the word "having" which was misinterpreted by the examiner.

Applicants acknowledge a brief telephone conference between undersigned (on behalf of applicants) and the examiner late in February of 2009. Undersigned understood the examiner's position to be that replacing the word "having" with "consisting of" would obviate the rejection, but that would create a new issue requiring another search, even though the language "a coating **consisting of a single layer** encapsulating the substrate" [emphasis added] was already in

claim 11 at the time of the Final rejection and the
aforementioned telephone conference.

It is indisputable that the references do not
disclose, teach, suggest or provide any reason for departing
from their disclosures by elimination all coating layers
except for their bottom most coating layers, contrary to their
requirements. As previously submitted, it would not have been
obvious to proceed contrary to the express teaching of
Takahashi and Schmidt which expressly require plural coating
layers, and provide no reason for having only one coating
layer over the substrate.

Withdrawal of the rejections are again respectfully
requested.

Applicants should add one additional point, replying
to the last comment in the second paragraph on page 4 of the
Final Action, where it is stated, "...with reference to Schmidt
et al., the intermediate product of said invention would read
on the limitation on the instant application," and the fourth
paragraph where, as understood, the examiner seems to be
taking the position that it would be obvious to use an
intermediate product with only one layer thereon as a pigment
simply because Takahashi states that "silicon dioxide coated
flaky substrates are utilized in cosmetics..." Both Schmidt

and Takahashi teach that the only useful pigments are those which have a plurality of coating layers, and there is absolutely nothing in any of the relied upon prior art which would have made it obvious to use an intermediate product in the claimed environment.

An intermediate product is an incomplete product. No one would use an incomplete product as a final product, as that would make no sense. It is only applicants' specification, not available to the person of ordinary skill in the art at the time the present invention was made, which provides any motive or incentive, or any reason, to use a metal-effect pigment having only a single layer encapsulating the substrate as a pigment for a cosmetic preparation.

Applicants again request favorable reconsideration, and early formal allowance.

Respectfully submitted,

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